

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL DEMAIO,

Plaintiff,

-against-

HARBOR FREIGHT TOOLS USA, INC.,

Defendant.

CIVIL ACTION NO.:

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, Harbor Freight Tools USA, Inc. (“Harbor Freight”), hereby gives notice that it is timely removing this civil action to the United States District Court for the District of Massachusetts because the amount in controversy exceeds the jurisdictional limits and there is complete diversity of citizenship among the parties. In support of this Notice of Removal, Harbor Freight states as follows:

I. NATURE OF THE CASE

1. Plaintiff, Michael Demaio (hereinafter “Plaintiff”), served his Summons and Complaint dated March 21, 2019 on Harbor Freight on April 25, 2019. The Summons and Complaint are attached as Exhibit 1.

2. Plaintiff alleges damages caused by the alleged negligence of Harbor Freight outlined in paragraphs 4 – 10 of Plaintiff’s Complaint and seeks recovery of monetary damages in the amount of \$278,942.84.

II. REQUIREMENTS FOR REMOVAL

3. This Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), because it is being filed within thirty days after service on Harbor Freight.

4. Removal is proper under 28 U.S.C. § 1441(a). The Superior Court for the Commonwealth of Massachusetts, Essex County, the court in which this action is pending, is located within the jurisdiction of the United States District Court for the District of Massachusetts.

5. Removing defendant is the only defendant sued. Therefore, no consent to remove is required.

6. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders filed and served to date in the action are attached hereto as Exhibit 1.

7. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this action has been given to Plaintiff's counsel, and Notice of Filing the Notice of Removal will be filed with the Clerk of the Superior Court for the Commonwealth of Massachusetts, Essex County. A true and accurate copy of the Notice of Filing the Notice of Removal that will be filed is attached hereto as Exhibit 2.

III. STATUTORY BASIS FOR FEDERAL JURISDICTION

8. Removal of this action is proper under 28 U.S.C. § 1441. The Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as it is a civil action between citizens of different states and in which the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

A. There Is Complete Diversity of Citizenship between the Parties

9. Plaintiff is an individual who resides in New Hampshire. *See Summons and Complaint*, Exhibit 1.

10. Defendant Harbor Freight is a Delaware corporation with a principal place of business in California. *See Secretary of the Commonwealth Corporations Divisions Business Entity Summary* attached hereto as Exhibit 3.

11. For purposes of diversity jurisdiction, a corporation is deemed a citizen of the state in which it is incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c).

12. As such, for diversity purposes, Harbor Freight is a citizen of Delaware and California.

13. As all parties are citizens of different states, complete diversity is satisfied.

B. The Amount in Controversy Exceeds the Jurisdictional Threshold

14. In the Complaint, Plaintiff alleges that on or about August 20, 2017, the Plaintiff was injured when a box containing a sliding compound miter saw fell on his right lower leg/foot. Complaint ¶ 6, Exhibit 1.

15. Plaintiff seeks total damages of \$278,942.84 for his alleged injuries. See Civil Action Cover Sheet, Exhibit 1.

16. As a result, the amount in controversy in this case is in excess of \$75,000, and removal is proper.

IV. PRAYER FOR RELIEF

17. Because the minimum jurisdictional threshold is met and complete diversity of citizenship exists among the parties, Harbor Freight respectfully requests that this Court assume

jurisdiction over this action and proceed with its handling as if it had been filed in the United States District Court for the District of Massachusetts.

HARBOR FREIGHT TOOLS USA, INC.
Respectfully submitted,
By its attorney,

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Dated: May 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2019, a copy of foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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/s/ Andrew L. Baldwin
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